

Mr. Devanand A. Pednekar,  
Peon, "Shri Shanta Vidyalaya".  
Sodiem, Siolim, Bardez, Goa. ... Petitioner.

VERSUS

1. The State of Goa,  
through the Chief Secretary  
with his office at Secretariat,  
Pnjam, Goa.
2. The Director of Education,  
Government of Goa,  
Panaji, Goa.
3. The Managing Committee,  
"Shri Shanta Vidyalaya",  
(English Medium High School),  
Sodiem, Siolim, Bardez, Goa.
4. Sodiem Chetna Vidyamandal,  
A Society registered under the  
Societies Registration Act,  
1860 with its Office at  
Sodiem, Siolim, Bardez, Goa. ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe,  
Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. G.  
Shirodkar, Addl. Government Advocate for the Respondents  
No.1 and 2.

Mr. V.A. Lawande, Advocate for the Respondents No.3 and 4.

**CORAM: P.V. KAKADE &  
P.V. HARDAS, JJ.**

DATE: 25TH NOVEMBER, 2002.

ORAL JUDGMENT: (PER P.V. KAKADE, J.)

The petitioner has moved this petition to seek  
appropriate writ and directions to the Respondents  
No.3 and 4 who are the Managing Committee of an

English Medium High School and the Society registered under the Societies Registration Act, 1860 running the said School, respectively, to comply with the requisitions contained in the letters dated 28.8.2001 and 6.12.2001 of Respondent No.2 Director of Education, Government of Goa and for further directions to promote the petitioner to the post of Lower Division Clerk in the said School run by the Respondent No.3 in the vacancy of the Lower Division Clerk which arose in the said School with all the consequential benefits.

2. We have heard Mr. S.D. Lotlikar, Senior Advocate for the Petitioner, Mr. Nadkarni, Advocate General for the Respondents No.1 and 2 and Mr. V.A. Lawande, Advocate for the Respondents No.3 and 4 at length and perused the record.

3. The facts giving rise to the dispute in brief are thus :-

The petitioner was employed as a Peon in the School Shri Shanta Vidyalaya, run by the Respondents No.3 and 4 at Sodiem, Siolim, Bardez, Goa which is an aided School. He is a senior peon of Respondent No.3. In April, 2001 there was a vacancy for the post of L.D.C. owing to the retirement of Shri Dina

V. Goltekar who was occupying the said post upon attaining the age of superannuation. It is alleged that though the petitioner was eligible for being promoted to the post of L.D.C., the Management of respondent No.3 did not hand over charge of the said post to the petitioner and, in fact, the charge of the post was handed over to one Mr. Anil Goltekar who is junior to the petitioner in the post of peon. It was also pointed out that the said Anil Goltekar had been rendered surplus on account of fall in number of students of the School.

In July, 2001 the petitioner made an application to the President of the respondent No.3 and brought to his notice that the post of L.D.C. of the School had fallen vacant and requested that he be handed over charge of the said post as being the senior peon. The petitioner also brought to the notice of the respondent No.3 that he had passed S.S.C. Examination in 1980 and that he had Diploma in Typewriting and had also attended Workshop of pension cases and therefore he requested that he be considered for the said post by promotion. When this request was not paid any heed to, the petitioner sent two letters to the School authorities that his application for promotional post be considered. In the meantime, in the month of June, 2001, the School

Management had made a representation to respondent No.2 seeking no objection certificate to fill up the post of L.D.C. by promoting Mr. Anil Goltekar to the said post. However by letter dated 28.8.2001 the Assistant Director of Education had informed respondent No.3 that the vacant post of L.D.C. should be filled by promotion by following usual procedure and instructions issued from time to time. The Assistant Director of Education had further informed that the case of Shri Anil Goltekar cannot be accepted since he was junior to the petitioner. The Assistant Director further observed that only one post of peon was eligible to the School and after promotion there would be no surplus peon.

Inspite of these directions, issued by the respondent No.2, no steps were taken by the respondents No.3 and 4 and therefore the petitioner again made repeated requests to consider his case. Thereafter in the month of October, 2001 the Management issued Memorandum to the petitioner alleging that he had completed the course of Diploma in Typewriting and Diploma course in Microsoft Office without obtaining permission from the Management and therefore he was issued show cause notice. According to the petitioner it was nothing but harassment tactics adopted by respondents no.3 and 4 because in

fact he had completed the said Courses about six years prior to that notice i.e. in 1995. Thereafter by letter dated 17.10.2001 respondent No.2 again called upon respondents No.3 and 4 to offer their comments on the petitioner's representation made in the month of September, 2001. It was the stand taken by the Management that the petitioner was unfit for the post of L.D.C. and requested that respondent No.2 should grant N.O.C. to fill up the post of L.D.C. by direct recruitment. However, respondent No.2 again insisted by letter dated 2.12.2001 that the respondents No.3 and 4 shall comply with the decision communicated to them by earlier letter dated 28.8.2001. Since the respondents No.3 and 4 refused to comply with the decision of respondent No.2, the petitioner has presented the present petition.

4. At the outset, it may be noted that the School run by the respondent No.3 is a Government aided School and therefore the respondents No.1 and 2 have certain statutory control over the same including the recruitment to the various posts such as L.D.C. It is also not in dispute that the petitioner is senior to Mr. Anil Goltekar whose name was favoured by respondent No.3 for the post of L.D.C. The said Anil Goltekar had become surplus because of fall in the strength of students in the

School. It is also not in dispute that the petitioner is otherwise eligible for appointment to the post of L.D.C. The only apparent objection of the respondents No.3 and 4 for promotion of the petitioner to the said post is that they want to fill up the post by direct recruitment and not by promotion. In insisting upon such method, it is quite apparent that they are avoiding to post the petitioner in the said post, taking the stand that the Government instructions are to the effect that such post should be filled in by direct recruitment only.

In their affidavit-in-reply respondent No.3 have taken a stand that in the year 1983 respondent No.2 had only one particular School and that the peon is not entitled for promotion of L.D.C. as per the Rules and the procedure followed to promote peon to the post of L.D.C. was irregular. Thereafter respondent No.3 has sought to put reliance on the Handbook published by Headmasters Association on School Administration, wherein it is categorically mentioned that the post of L.D.C./Lower Division Clerk-cum-Librarian should be filled in by direct recruitment and not by promotion from Group 'D' post even if qualified employees are available in Group 'D' post under the same management as Group 'D'

employees are to be considered for fresh recruitment to Lower Division Clerk Post by the management along with other candidates.

5. In our considered view the Handbook published by the Headmasters Association cannot have statutory force to outweigh the specific directions issued by the respondent No.2/Director of Education, Government of Goa, who has specifically informed the management by letter dated 28.8.2001 to the effect that :- (i) The post of L.D.C. vacant due to the retirement of Shri Dina V. Goltekar, LDC is permitted to be filled by promotion by following usual procedure and instructions issued from time to time; (2) The case of Shri Anil Goltekar cannot be accepted since he is junior to that of Shri Devanant A. Pednekar. As per enrolment only one post of Peon is eligible to the school hence after promotion there will be no surplus peon. This decision was again reiterated by letter dated 6.12.2001 by respondent No.2 stating that the decision conveyed vide letter dated 28.8.2001 stood good even after protest by respondents No.3 and 4.

6. In this regard Mr.V.A. Lawande, learned Advocate for the respondents No.3 and 4 sought to put reliance on certain instructions issued by the State

Government in the Official Gazette dated 12th February, 1998, besides the compilation published by the Headmaster Association to which reference is already made. Taking into account both the documents we do not find any mandatory provision to show that the impugned post of L.D.C. cannot be filled in by promotion and that the direction issued by the respondent No.2 vide letter dated 28.8.2001 is contrary to any legal provisions of the State Government.

7. Mr. Lotlikar, the learned senior counsel for the petitioner, submitted that the facts and circumstances brought on record were sufficient to show that the act of the respondents No.3 and 4 denying promotion to the petitioner was unreasonable, unfair, illegal and arbitrary and their refusal to give effect to the directions issued by the respondent no.2 would amount to illegality and arbitrariness. In our considered view, there is force in the said submission, especially when we take into account the attitude adopted by the respondents No.3 and 4 in this case.

8. We are satisfied that the respondents No.3 and 4 have absolutely no reason to deny the due and legal benefit of the promotional post to the

petitioner in view of the facts and circumstances, including that said Anil Goltekar is junior to the petitioner and petitioner himself is evidently qualified for the said post.

9. Therefore, in view of the facts and circumstances involved in this petition, we are inclined to hold that the act of the respondents No.3 and 4 is unfair, illegal and arbitrary and therefore interference by this court is necessary.

10. In the result, the Petition is allowed to the extent that the respondents No.3 and 4 are hereby directed to comply with the requisitions contained in the letters dated 28.8.2001 and 6.12.2001 of respondent No.2 and while doing so, they are directed to consider the case of the petitioner for promotion to the post of Lower Division Clerk which is vacant with the respondent No.3. Rule is made absolute.

P. V. KAKADE, J.

P. V. HARDAS, J.

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